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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,997	06/21/2001	James Harrison Aylward	07404-003003	4738

7590 08/06/2002

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EXAMINER

TATE, CHRISTOPHER ROBIN

ART UNIT PAPER NUMBER

1651

DATE MAILED: 08/06/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/888,997

Applicant(s)

Aylward

Examiner

Christopher Tate

Art Unit

1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 21, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-95 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 33-95 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 33-64 and 82-92, drawn to a method of stimulating the immune system using a jatrophane compound, or derivative or salt thereof, classified in class 514, subclass 100+.
- II. Claims 33, 34, 65-69, and 82-92, drawn to a method of stimulating the immune system using a pepluane compound, or derivative or salt thereof, classified in class 514, subclass 100+.
- III. Claims 33, 34, 70-73, and 82-92, drawn to a method of stimulating the immune system using a paraliane compound, or derivative or salt thereof, classified in class 514, subclass 100+.
- IV. Claims 33, 34, 74-77, and 82-92, drawn to a method of stimulating the immune system using a angeloyl-substituted ingenane compound, or derivative or salt thereof., classified in class 514, subclass 100+.
- V. Claims 78-81, drawn to drawn to a method of stimulating the immune system via administering an effective amount of at least two compounds (selected from numerous compounds recited therein), classified in class 514, subclass 100+.

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VI. Claims 93-95, drawn to a method of recruiting an immune cell to a region of application of an undefined compound by administering an effective amount of the undefined compound to the region, classified in class 424, subclass 725, for example.

1. The inventions are distinct, each from the other because of the following reasons:

The methods of Groups I-IV each comprise the *in vivo* administration of mutually exclusive compounds thereto and, thus, are distinct and different, each from the other. The method of Group V is different and distinct from each of the methods of Groups I-IV because the methods of Groups I-IV require the administration of an effective amount of one active compound thereto, whereas the method of Group V requires the administration of an effective amount of a combination of at least two bioactive compounds. Further, the two or more bioactive compounds administered in the Group V method (from among the numerous compounds recited therein) do not necessarily include the singular compounds of any one of Groups I-IV. The method of Group VI is drawn to the administration of an undefined compound (e.g., plant extract) which does not necessarily include any of the compounds of Groups I-V and, further, is directed to a different functional effect than that of Groups I-V. One would not have to practice the various methods at the same time to practice just one method alone.

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The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Finally, the consideration for patentability is different in each case. Thus, it would be an undue burden to examine all of the above inventions in one application.

Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even though the requirement be traversed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Tate whose telephone number is (703) 305-7114. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached at (703) 308-4743. The Group receptionist may be reached at (703) 308-0196. The fax number for art unit 1651 is (703) 308-4242.



Christopher R. Tate
Primary Examiner, Group 1651